

WASTE FACILITY SITING BOARD

THE MEDIATION PROCESS

Sec. 289.33(9)(c)(d), Wis. Stats.

Parties contemplating the use of the Waste Facility Siting Board's mediation process frequently have questions. The Board hopes that the answers to some of the more frequently asked questions prove helpful.

What is mediation?

Mediation is a process that uses a neutral person called a mediator to assist the parties in reaching a mutually acceptable resolution to their dispute. The mediator does not have the authority to make a binding decision, unlike the arbitrator in an arbitration whose decisions are final and binding.

Why use mediation if the parties have tried to negotiate and were unable to settle?

A mediator can bring a new perspective to the proceedings. Through knowledge of the subject matter, the mediator can assist parties in exploring alternatives that the parties might not have considered previously.

What are some of the advantages of mediation?

1. Parties are directly engaged in the negotiation of the settlement.
2. The mediator, as a neutral third party, can view the dispute objectively, often identify stumbling blocks, and assist the parties in exploring alternatives which they might not have considered.
3. At best mediation avoids arbitration, at worst mediation narrows the issues for arbitration.
4. Mediators are carefully chosen for their knowledge and experience.
5. Parties enhance the likelihood of continuing a mutually beneficial working relationship in this give and take process.
6. Mediation is confidential and information disclosed at a mediation may not be divulged as evidence in any arbitration, judicial, or other proceeding.

How long does mediation take?

Each case is unique. Some cases are settled in two or three sessions. Others may require additional time, depending on the complexity of the issues.

Who are the mediators?

Mediators include professional mediators, attorneys and retired judges. These mediators are chosen because they are experienced and competent in their field, are objective and impartial, and have a commitment to resolving disputes.

What does mediation cost?

The mediators set their own fees. When parties request a list of mediators, the Board will include the mediator's fee and a brief resume of each of the five mediators provided. The cost of a mediator is shared equally between the applicant and the local committee unless otherwise negotiated or arbitrated.

What function does the mediator serve?

The mediator brings the parties together voluntarily and works with the parties jointly and separately to reach an agreement. The mediator, however, does not have the power to impose a settlement upon either party.

If mediation is nonbinding is the settlement enforceable?

Yes. A signed mediated agreement is as enforceable as any other contractual agreement.

How do the parties request the services of a mediator?

Either party may send the Board a written request for the services of a mediator. The Board, after receiving a request for the appointment of a mediator by either party, shall immediately submit to the parties a list of five mediators, including the resume and fee schedule of each. Upon receipt of such list, the parties shall alternately strike names until a single name is left. That name shall be appointed mediator. The petitioning party shall notify the Board in writing of the identify of the mediator selected. Upon receipt of such notice, the Board shall formally appoint the mediator.

How will mediation proceed?

The mediator may hold separate meetings with the parties or their representatives and such meetings may be closed, pursuant to s. 19.85(1)(e), Wis. Stats. Mediation meetings shall be conducted at such time and place agreed to by the mediator and the parties or their representatives. All records of meetings between the mediator and the parties are subject to the provisions of subch. II, ch. 19, Stats., Open Records Law.

Who do the parties call if they have further question about the mediation process?

Parties may contact their lawyer or David H. Schwarz, Legal Counsel, Waste Facility Siting Board, at (608) 266-8007 or e-mail him at david.schwarz@doa.state.wi.us.

Disclaimer: This information is issued to inform and not to advise. For specific legal advice, a party should consult its attorney or contact the Waste Facility Siting Board, 5005 University Avenue, Suite 201, Madison, WI 53705, (608) 266-7709 or by fax at (608) 264-9885.

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